IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 5171 OF 2005

IN

CRIMINAL APPEAL NO. 715 OF 2005

1. Srajban @ Bhone Soda
   Dhanajiram
2. Sunil Ismasingh @ Dile
   Dhanjiram Soda ..Appellants
(Ori.Accused Nos.6 &7)

versus

State of Maharashtra ..Respondents

Mrs. Anjali Patil Contractor for the Appellants - Original Accused Nos. 6 and 7.
Mrs. A. S. Pai, APP for the Respondents - State.

CORAM : D. G. DESHPANDE, &
V. K. TAHILRAMANI,JJ.

DATE : 22ND MARCH, 2006

P.C. :

1. The Appellants are original accused nos. 6 and 7, who have filed this bail application. We have heard counsel for the appellants and learned APP for the Respondents - State.

2. Seven accused in all are alleged to have assaulted one Soni. They are alleged to have used different weapons and the appellants - accused Nos. 6 and 7 came to be convicted because of their role in the assault. The trial court found that they were armed with deadly weapons, which were recovered ultimately from them and which were found to contain blood of the blood group 'B' which was of the deceased. There were also eye witnesses to the incident i.e. P.W. 1 and P.W. 20.

3. The learned counsel for the appellants - accused contended that the evidence of discovery of weapons at the instance of the appellants is doubtful, even, at this stage, because the said discovery is shown after eight days of the incident, whereas star Witness P.W. 1 Pappu states that all those weapons attributed to the present appellants - accused were shown to him by the police in the police station on the same day of the report i.e. six days before the actual recovery. According to the counsel for the appellants - accused, if the witness P.W.1 is believed as giving true version of

the incident, then there was no reason why not to accept this part of his testimony.

4. Secondly, the learned Counsel for the appellants contended that even though P.W. 1 claims to be eye witness and in support thereof he has shown that he has received some injuries on his hands at the instance of the accused. The Doctor has clearly opined that those injuries could be self inflicted, therefore, according to the accused, the presence of this witness is doubtful. She further drew our attention to the evidence of P.W. 20 who is another eye witness of the accident and who has stated that there was so much darkness at that time (11 p.m) that he could see only two persons and he is positive that none of the accused Nos.6 and 7 were seen at the time of the incident nor they were having any weapons.

5. Learned counsel for the appellants therefore contended that if two eye witnesses give contradictory version, then the accused were entitled for grant of bail.

6. On the other hand, the learned APP contended

that discovery of weapons of assault at the instance of the accused, identification of the weapons in court, and evidence of P.W. 1 involving the present appellants - accused, are sufficient to reject the bail application. We are not in agreement with the submissions of the learned APP. The evidence of P.W. 1 that the weapons were shown to him on the same day of the FIR, creates doubt about the recovery, at least, for the purpose of granting bail. Non involvement of accused No. 6 and 7 by P.W. 20 in contradiction to the evidence of P.W. 1 is also a strong circumstance in their favour. Therefore, order :

ORDER

. Appellants - Accused Nos. 6 and 7 be released on their P.R. bond of Rs.10,000/- each with one solvent surety, each, in the like amount.

. Appellants - Accused Nos. 6 and 7 to attend the concerned Police Station once in a week for six months, and thereafter once in a fortnight for one year, and, then thereafter once in two months till the appeal is disposed of.

. Needless to say that the appellants - accused Nos. 6 and 7 will not tamper with witnesses nor will try to contact them in any manner whatsoever.

. Application disposed of.

(D.G. DESHPANDE, J.)

(V.K. TAHILRAMANI, J.)